

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA BOARD OF NURSING

In the Matter of the Nursing License
of Carmen K. Schmoll, L.P.N.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

License No. 38787-5

The above-entitled matter was set for a prehearing conference before Administrative Law Judge Steve M. Mihalchick of the Minnesota Office of Administrative Hearings at 3:30 p.m. on Monday, July 28, 1997, at the Board of Nursing Office in Minneapolis, Minnesota. Ernesto L. Chavez, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Review Panel of the Minnesota Board of Nursing ("the Board"). There was no appearance by or on behalf of the Respondent, Carmen K. Schmoll, L.P.N. The record closed on July 31, 1997, upon receipt of a letter by Mr. Chavez requesting that a default recommendation be issued.

This Report is a recommendation, not a final decision. The Board of Nursing will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Joyce M. Schowalter, Executive Director, Minnesota Board of Nursing, 2700 University Avenue West, Suite 108, St. Paul, Minnesota 55104, telephone number 612/642-0567, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether disciplinary action should be taken against the L.P.N. license of the Respondent on the grounds set forth in Minn. Stat. §§ 148.261 and 148.265 (1996).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order for Prehearing Conference and Hearing in this matter was mailed to the Respondent by first-class mail at 710 Lime Street, P.O. Box 447, Clearwater, Minnesota 55320, on June 27, 1997. That address is the last known address for the Respondent according to the records of the Board of Nursing.

2. The Notice of and Order for Prehearing Conference and Hearing served on the Respondent contained the following informational notice in the paragraph ordering the prehearing conference:

Respondent is urged to attend; failure to do so may prejudice Respondent's rights in this proceeding and any subsequent proceedings related to this matter, may result in the allegations contained herein being taken as true, and may be the basis for disciplinary action against Respondent.

3. The Respondent did not file any Notice of Appearance with the Administrative Law Judge or make any prehearing request for a continuance or any other relief. The Respondent did not appear at the prehearing conference scheduled for July 28, 1997, or have an appearance made on her behalf. Respondent has not contacted the Administrative Law Judge between the date of the hearing and the date on which this Report was issued.

4. Because the Respondent failed to appear at the prehearing conference in this matter, she is in default. Pursuant to Minn. Rules 1400.6000 (1995), the allegations contained in the Notice of and Order for Prehearing Conference and Hearing are hereby taken as true and incorporated as the following Findings.

5. In the spring of 1993, Respondent was admitted to Granite Falls for chemical dependency treatment on an inpatient basis. Following discharge from Granite Falls, Respondent asserts she maintained sobriety for approximately five to six months. She then relapsed by drinking alcohol. At that time Respondent drank alcohol two to three times per week, usually in excessive amounts.

6. In May 1995, Respondent began binge drinking. Respondent drank alcohol four to five days per week in excessive amounts. At this time Respondent began missing days at work due to her drinking.

7. On August 24, 1995, Respondent received a psychiatric evaluation and diagnostic assessment from Central Minnesota Mental Health Center ("Central Minnesota"), St. Cloud, Minnesota, due to depression following her marital separation from her husband. Respondent was diagnosed with Major Depressive Disorder, recurrent, moderate and Alcohol Dependence in sustained full remission.

8. On January 16, 1996, Respondent was admitted to the Hazelden Foundation, Center City, Minnesota, on an inpatient basis due to her inability to abstain from consuming alcohol. On several occasions prior to her admission, Respondent had been admitted to a detoxification center because of her excessive and continued alcohol abuse.

9. On February 6, 1996, after her discharge from Hazelden, Respondent was referred to Central Minnesota to complete treatment on an outpatient basis.

10. On February 8, 1996, Respondent reported herself to the Health Professionals Services Program ("HPSP") for monitoring of her chemical dependency. On February 9, 1996, Respondent began an aftercare program at Central Minnesota.

11. On March 22, 1996, the HPSP offered Respondent a participation agreement and monitoring plan for her signature.

12. On May 20, 1996, Respondent's employer, St. Cloud Hospital, St. Cloud, Minnesota, informed the HPSP that Respondent continued to use alcohol.

13. On May 21, 1996, Respondent informed the HPSP that she relapsed by drinking alcohol and had not signed the participation agreement. Respondent told her HPSP counselor she would provide the HPSP with a letter detailing her use and the steps she was taking in support of her recovery. Respondent also agreed to enter into a refrain-from-practice agreement with the HPSP following the HPSP's receipt of her letter. Respondent was informed that if she failed to respond by letter as promised, her case would be referred to the Board for consideration of disciplinary action.

14. On June 3 and June 6, 1996, Respondent's HPSP counselor attempted to contact Respondent by telephone regarding the letter she had promised to send but had not sent.

15. On June 11, 1996, St. Cloud Hospital telephoned Respondent's HPSP counselor regarding continuing practice concerns due to Respondent's ongoing alcohol use.

16. On June 12, 1996, Respondent was discharged from the HPSP for failure to cooperate and her case was referred to the Board of Nursing.

17. On November 8, 1996, the Board served Respondent with a Notice of Conference with Board of Nursing Review Panel scheduling a conference for December 9, 1996. Respondent attended the conference with the Review Panel, comprised of Betty Hanna, Board member, and Shirley A. Brekken, Associate Executive Director of the Board, to discuss the allegations contained in the Notice of Conference dated November 8, 1996. Ernesto L. Chavez, Assistant Attorney General, represented the Panel at the conference. The Review Panel deliberated and proposed a Stipulation and Consent Order to Respondent for referral to the HPSP.

18. By letter dated January 16, 1997, the Board mailed Respondent a proposed Stipulation and Consent Order to resolve this matter informally. The Review Panel asked that Respondent sign the proposed agreement, if she agreed with the terms, and return it to the Board by January 31, 1997. Respondent failed to sign and return the proposed agreement or otherwise inform the Review Panel of her intention with regard to the agreement.

19. On March 3, 1997, the Board mailed Respondent a second letter reminding her to sign and return the proposed Stipulation and Order. Respondent was informed that if

the Board did not receive a signed copy of the Stipulation and Consent Order from her by March 17, 1997, the Review Panel would consider initiating a contested case hearing.

20. By letter dated March 25, 1997, the Board informed Respondent that it had not yet received her signed Stipulation and Consent Order. The Review Panel decided to refer this matter to a contested case hearing.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Minnesota Board of Nursing and the Administrative Law Judge have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 148.261, and 214.10 (1996).

2. The Board of Nursing has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

3. The Minnesota Board of Nursing has the authority to take disciplinary action against licensed practical nurses, including the Respondent, under Minn. Stat. §§ 148.261 and 148.262 (1996).

4. Minn. Stat. § 148.261, subd. 1 (1996), provides, in pertinent part, as follows:

The board may deny, revoke, suspend, limit, or condition the license and registration of any person to practice professional or practical nursing under sections 148.171 to 148.285, or to otherwise discipline a licensee or applicant as described in section 148.262. The following are grounds for disciplinary action:

(8) Actual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as a result of any mental or physical condition..

(21) Making a false statement or knowingly providing false information to the board, failing to make reports as required by section 148.263, or failing to cooperate with an investigation of the board as required by section 148.265.

5. Pursuant to Minn. Stat. § 148.265 (1996), “[a] nurse who is the subject of an investigation by or on behalf of the board [of nursing] shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient or other records in the nurse’s possession, as reasonably requested by the board, to assist the board in its investigation and to appear at conferences and hearings scheduled by the board”

6. The Respondent is in default herein under Minn. Rules 1400.6000 (1995) as a result of her failure to appear at the prehearing conference.

7. Under Minn. Rule 1400.6000 (1995), the allegations contained in the Notice of and Order for Prehearing Conference and Hearing may be taken as true or deemed proved without further evidence when a party fails to appear at the hearing.

8. Under Minn. Rules 1400.7300, subp. 5 (1995), the Board of Nursing has the burden of establishing by a preponderance of the evidence the statutory violations charged.

9. As a result of the Respondent's default and the facts deemed to be admitted, the Board of Nursing has met its burden of proof.

10. The Respondent's conduct as set forth in the Findings violates Minn. Stat. §§ 148.261, subd. 1(8) and (21), and 148.265 (1996).

11. As a result of the violations, the Board of Nursing may deny, suspend, revoke, or restrict the Respondent's license, or to otherwise discipline her as set forth in Minn. Stat. §148.262 (1996).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Board of Nursing take disciplinary action against the L.P.N. license of the Respondent, Carmen K. Schmoll.

Dated this 7th day of August, 1997.

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default.

NOTICE

Pursuant to Minn. Stat. § 1462, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail.